acres. Whether, although her licence was so limited, the use and occupation which in fact she had of the whole pond was known to and allowed by the Land Office authorities has not been established except by the evidence of the Plaintiff herself. The one witness who might have given evidence to clear up this point, i.e. the Penghulu, was not called by the Plaintiff although subpoenaed by her as a witness. Whether such acquiescence, if it existed, on the part of the Land Office authority, would operate, as against a third party, i.e. the Defendant, to legalise the position of the Plaintiff at any rate to the extent of making her a lawful occupier of the land containing this large pond is a question which, in the view I have taken of the legal issues, it is unnecessary for me to decide.

The result then is that the Plaintiff's case fails and the suit is dismissed with costs.

Action dismissed.

[SPECIAL CIVIL JURISDICTION]

MURRAY-AYNSLEY, J.

December 12, 1938.

DYAL SINGH v. PANDAK DAHALIM.

(PERAK CIVIL APPLICATION No. 30 of 1938)

Land Code (Cap. 138) S. 134—land subject to lien whether attachable after judgment.

Where land is subject to a lien protected by a caveat, a judgment creditor may instead of enforcing his security proceed by way of attachment if he is minded to do so.

REFERENCE to the Judge by the Magistrate at Kuala Lumpur.

Morris Diamond for the Plaintiff.

Tuan Haji Abdul Wahab for the defendant.

Murray-Aynsley, J.—This is a reference by the Magistrate at Kuala Kangsar; the question referred is whether the fact that the Plaintiff has a lien protected by a caveat prevents attachment after judgment of the land subject to the lien. It was pointed out by counsel for the Plaintiff that at the material time the caveat had lapsed, and therefore on the facts the question does not arise in the present case.

The matter otherwise is not free from difficulty but I am of opinion that there is nothing to prevent a judgment creditor proceeding by way of attachment instead of by enforcing his security if he is minded to do so.

Reference answered.

[APPELLATE CRIMINAL JURISDICTION]

RAJA MUSA, J.

PUBLIC PROSECUTOR v. SARBAN SINGH.

(N.S. MAGISTRATE'S CRIMINAL APPEAL No. 26 of 1938)

Traffic Enactment No. 17 of 1937, Ss. 6, 12 (i)—using an unlicensed motor lorry—prosecution offering no evidence—conviction on a plea of guilty—inadequacy of sentence.

The respondent pleaded guilty to a charge of using a lorry without having it licensed, upon which he was convicted and ordered to pay costs which amounted to 75 cents. In inflicting the sentence the trial Magistrate took into consideration the fact that the prosecution offered no evidence. On an appeal to the Judge by the Public Prosecutor on the ground of inadequacy of sentence,

Held, that upon the respondent pleading guilty to the charge it was the duty of the trial Magistrate to call for evidence particularly in a matter, such as this, which affected his discretion.

MAGISTRATE'S CRIMINAL APPEAL.

Draper, Deputy Public Prosecutor, for the Public Prosecutor the Appellant.

Edgar Joseph, for the Respondent.

Cur. Adv. Vult.

Raja Musa, Ag. J.—In this appeal the Public Prosecutor has appealed on the ground of inadequacy of sentence.

The Respondent was charged with using his motor lorry on the 8th August, 1938, without having had it licensed. The Respondent pleaded guilty to that charge upon which he was convicted and ordered to pay the costs which amounted to 75 cents.

It appears that the Respondent owns a fleet of four lorries which he uses for trade purposes. Licences are payable quarterly and I am told that the licence fee of a lorry of this description is $20/- per month.

In inflicting the sentence which he did the learned Magistrate took into consideration the fact that the Prosecution offered no evidence To my mind this is entirely erroneous. It is the duty of a Magistrate to call for evidence particularly in a matter affecting discretion.

I considered the sentence inflicted in this case was entirely inadequate and I altered it to a fine of $75/- and the costs of the summons 75 cents.

Sentence Enhanced.